

Remarks

Reconsideration and allowance in view of the foregoing amendments and the following remarks are requested. By this amendment, Applicant has added new claim 12-13, amended claims 7-10 and cancelled claims 1, 5 and 6. Thus, claims 7-13 are pending in the application. New claim 12 incorporates the subject matter of claims 1, 5 and 6 and has been reworded to further distinguish the claim from the cited prior art. Further support for claims 12 and 13 can be found at least at pages 2 -3 of the application. No new matter has been added by the amendments. Applicant respectfully requests reconsideration of the Rejections, which are discussed below.

Claim Rejections

Claims 1 and 5-11 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to point out and distinctly claims the subject matter which Applicant regards as the invention. By this amendment claims 1, 5 and 6 have been canceled. New claim 12 incorporates the subject matter of claim 1 and no longer recites the phrase “or the like” which the Office Action indicated rendered the claim(s) indefinite.

Claims 1, 5 and 8 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,417,339 to Liu (“Liu”). Claims 1, 6 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,950,854 to Rider, Jr. et al. (“Rider”). Applicant respectfully traverses each of the rejections and submits that none of the cited prior art, taken alone or in combination, discloses or suggests each and every feature of the present claims.

Claims 1, 5 and 6 have been canceled and the subject matter of these claims

incorporated into new claim 12. The rejections will be addressed with respect to new claim 12. Applicant respectfully traverses these rejections on the grounds that the cited references do not teach or suggest all of the elements of new claim 12.

Claim 12 recites a number of features not found in the cited references. Claim 12 requires that the two half-shells are engaged together such that the half-shells remain connected together when the container is in the open position while still permitting limited movement of one half-shell relative to the other, in a direction perpendicular to the plane of the mouth. The Office Action cites to Fig. 5 of Liu as disclosing an articulation means which permits a limited movement of one half-shell relative to the other in a direction perpendicular to the plane of the mouth, however nothing in Liu shows or suggests that such a limited movement of one half-shell relative to the other, in a direction perpendicular to the plane of the mouth would be possible while the connection means remain mutually engaged as required in claim 12.

This is particularly apparent from Fig. 4 of Liu which shows that when the buckle type connection means is engaged that only a pivoting movement around groove 243 would be possible. In other words, when the container of Liu is in the open position with the connection means engaged, the only potential movement of the cover and the box is an articulation about the groove 243 defined as the hinge point (Liu, Col. 3, Lines 11-18). A limited movement of one half-shell relative to the other, in a direction perpendicular to the plane of the mouth is not possible with the articulation means of Liu. The attachment means of Liu functions such that “[w]hen the flexible strip 24 is inserted into the track 110, the flexible barb 241 deflects inwards as the strip 24 proceeds down the track 110 and when the flexible barb 241 lines up with the aperture

16, the flexible barb 241 displaces outwardly engaging an upper lip 161 of the aperture 16, thus locating the strip 24, with the cover 2 secured to the transparent box 1.” (Liu, Col. 2, Lines 59-65). When engaged, the flexible barb 241 is tightly engaged with the aperture 16 which clearly prevents the cover of Liu from moving in “in a direction perpendicular to the plane of the mouth” and would only permit an articulating movement around the hinge point of the groove 243. For at least these reasons, Liu does not disclose or suggest all of the limitations of claim 12. Applicant respectfully requests the rejections over Liu be withdrawn.

Similarly, the Office Action cites to Figure 3 of Rider as disclosing a connection that permits both an opening, pivoting movement of one half-shell relative to the other half-shell and a limited movement of one half shell relative to the other in a direction perpendicular to the plane of the mouth. Fig 3. of Rider is a top view of the interior of the container and does not show the manner in which the top portion and bottom portion of the container can move relative to one another. The manner in which the top and bottom portions of the container of Rider moved about the “articulation means,” labeled in Fig. 3 as shown in the Office Action, can be more clearly visualized in Figs. 4 and 5. Fig. 4 of Rider shows a side view of the container in an open position and Fig. 5 of Rider shows a side view of the container in a closed position. It is clear from these figures, that in moving from the open position to the closed position (or vice versa), that the top and bottom portions would only be capable of rotating about hinge 28. Hinge 28 which is only capable of permitting an articulating movement and would not permit movement “in a direction perpendicular to the plane of the mouth” as required by claim 12.

Furthermore, claim 12 requires two separate half-shells which are connected by

first and second connection means. The claims make it clear that these connection means must be engaged in order for the half-shells to be joined together. On the other hand, the articulation means of Rider permanently joins the top and bottom portions of the container. If the articulation means of Rider were “disengaged” it would no longer be able to serve as hinge.

For at least these reasons, Rider does not disclose or suggest all of the limitations of claim 12. Applicant respectfully requests the rejections over Rider be withdrawn.

Claims 7-8 depend from claim 12, which is believed to be allowable over Liu and Rider for the reasons explained above. Therefore, claims 7-8 are allowable as depending from an allowable base claim. Applicant respectfully requests the rejections over Liu and Rider be withdrawn.

Claim 9 is rejected under 35 U.S.C. § 103(a) as being obvious over Liu in view of U.S. Publication No. 2002/0008106 to Bezek et al. As discussed above, Liu fails to disclose or suggest all of the features of amended claim 12. Claim 9 has been amended to depend from claim 12, which is believed to be allowable for the reasons explained above. Therefore, claim 9 is allowable as depending from an allowable base claim.

Claim 10-11 are rejected under 35 U.S.C. § 103(a) as being obvious over WO 93/00267 to Ferrero in view of Liu. As discussed above, Liu fails to disclose or suggest all of the features of amended claim 12. Ferrero fails to make up for the deficiencies of Liu and therefore the combination of Ferrero and Liu does not disclose or suggest all of the limitations of claims 10-11. Applicant respectfully requests the rejections over

Ferrero and Liu be withdrawn.

In view of the above amendments and remarks hereto, Applicant believes that all of the Examiner's rejections set forth in the Office Action been fully overcome and that the present claims fully satisfy the patent statutes. Applicant, therefore, believes that the application is in condition for allowance. The Director is authorized to charge any fees or overpayment to Deposit Account No. 02-2135.

The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

Respectfully submitted,

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